nized special laws for a certain class only where the classification was required by urgent public necessity.[20] However, without Article III, Section 7, of the Pennsylvania Constitution, the Attorney's Lien Act of 1915 would undoubtedly be enforceable. Without that constitutional prohibition, the members of the Pennsylvania bar would be in the same favorable position as are the lawyers in many of the United States, and as are the solicitors in England.

Just as changing conditions brought about a departure from the old honorarium system, just as counsel's right of action for his fee was found to be a necessary substitute for the political prestige which was formerly his only reward, so today the legislatures of the country are realizing the necessity of giving the lawyer a safeguard such as the ordinary business man has. A lender can demand an indorser on a note; a builder can demand a surety on the contractor's bond; a manufacturer can sell his product on a bailment lease and yet retain title to it. But a lawyer, in practice, cannot obtain any guarantee for his fees. Yet, because of the nature of his profession, he must often accept the case of a client whom he knows to be poor or irresponsible, and of whose honesty he has no proof. If such a client pockets the fruits of the litigation, a suit and judgment against him for fees would be a farce. And such a contingency is far from unlikely, in these days of claim departments and indemnity companies, where one of the chief inducements for settlement is the client's knowledge that he can collect all the money, and neglect to pay the attorney whom he has retained and through whose efforts the case has been brought up to the point of settlement.

Looking to the ultimate result, it will also be seen that it is to the client's interest that there should be an enforceable attorney's lien law. For one who has a grievance, be it great or small, will the more readily find a lawyer, a better lawyer, and one who will devote his best efforts to the case, if there is the certainty that the client will not reap all the benefits and the attorney have naught but the labor. However, under the present constitution of Pennsylvania, an attorney's lien law is impossible. The mistake, if it be such, can only be corrected by constitutional amendment or revision. *A. L.*

RIGHT OF THE STATE TO ALTER CONTRACT OR FRANCHISE RATES OF PUBLIC UTILITIES.—The extent to which agreements as to rates of service contained in contracts between public service companies and the consumer, or in franchises granted by municipal or state governments, are binding, is a question of vital importance to public utility companies all over the country. Rates which originally yielded a return commensurate with the risk involved in such undertakings, the capital invested therein, and the service

[20] Commonwealth v. Hanley, 15 Pa. Super. Ct. 271 (1900), *undertakers;* Commonwealth v. Jones, 4 Pa. Super. Ct. 362 (1897), *miners.*

performed by the utility are, in many cases, no longer sufficient to pay ordinary operating expenses and fixed charges. This has been brought about by conditions over which the utility has no control, and is due chiefly to the greatly increased cost of labor and materials in the years during and since the war. The public service company, where long term contracts or franchise agreements are held binding, is unable to increase its revenue in order to keep pace with increased and increasing costs of operation. State utility commissions, legislatures, and even courts have not been slow to realize this condition; and in general they have sought to give the necessary relief.

This tendency is perceptible in two cases recently decided—one, *Borough of Wilkinsburg v. Public Service Commission*,[1] by the Superior Court of Pennsylvania, and the other, *Dubuque Electric Company v. City of Dubuque, Iowa*,[2] by the United States Circuit Court of Appeals for the Eighth Circuit. In the Pennsylvania case, the court decided that the state Public Service Commission had power to order a change in rates fixed in a "consent"[3] ordinance. In reaching this conclusion, the court construed as a general reservation of the police power a provision of the state constitution that "the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State,"[4] though it was argued that the section quoted "merely put a restriction on the usurpation of powers by corporations." Said the court: "The existence of the police power is assumed; its 'exercise' shall not be abridged or so construed as to infringe the general well-being of the State. . . . . It seems that the framers of the Constitution had in mind that whatever other provisions there might be in the instrument, the operations of corporations should not be allowed to impair the sovereignty of the state, so as to deprive the legislature of remedying such evils as might arise, and that when such a situation presented itself as we are now considering, the courts might be entirely untrammelled in preserving the rights of the State, and furthering its welfare."[5]

[1] 72 Pa. Super. Ct. 423 (1919).

[2] 260 Fed. 353 (1919).

[3] Article XVII, Sec. 9, of the Constitution of Pennsylvania provides that "No street passenger railway shall be constructed within the limits of any city, borough, or township, without the consent of its local authorities." This has been construed as giving the local authorities absolute discretion and exclusive power to fix the conditions upon which they will consent to the construction of a street passenger railway upon the local highways, including the power to contract as to rates, free from legislative interference. Allegheny v. Millville Railway Company, 159 Pa. 411; 28 Atl. 202 (1893); Plymouth Twp. v. The Railway, 168 Pa. 181; 32 Atl. 19 (1895).

[4] Constitution of Pennsylvania, Article XVI, Sec. 3.

[5] *Cf.* Foltz v. Public Service Commission, 73 Pa. Super. Ct. 24 (1919), decided the same day, but reported since the above note was written, in which a like conclusion was reached by the same court, but on the ground that the word "corporation" as used in Article XVI, Sec. 3, must be construed to mean

In the other case, it was held that the provisions of a franchise which required a street railway company to sell at reduced rates workingmen's tickets, good only at certain hours of the day, was not enforceable against the company after passage by the state legislature of an act[6] prohibiting common carriers, in the sale of tickets for transportation at reduced rates to discriminate between persons purchasing the same. The contention of the municipalities in these cases was that if the state laws involved were construed as permitting the change in rates, they would impair the obligation of the contract between them and the utility concerned.[7] In such cases it is necessary for the courts, where they find that a binding contract exists, to determine what is its obligation and if that obligation is impaired by subsequent legislation.[8] It is only under the last of these considerations that a constitutional question is raised.

That the Constitutional prohibition on state laws impairing the obligation of contracts does not restrict the power of the state to protect the public health, morals or safety—generally called the "police power"—is well settled.[9] This is a power inherent in sovereignty and cannot be abridged nor divested by the state legislature even by express grant, and all contract and property rights are held subject to its exercise.[10] The rates for service charged by persons or corporations engaged in a business affected with a public interest have long been considered to have such an important bearing upon and close connection with the public welfare generally as to justify regulation thereof by the state legislature under its police power.[11] It follows that agreements as to rates, whether made between the utility and individuals, cities, or the state are equally subject to a reserved power in the state legislature to enact laws under which such charges may be regulated, and that no attempt of the legislature to restrict this power should be valid. But the cases seem to draw a distinction between grants of privileges injurious to the public safety, morals

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municipal as well as private corporations. Note, however, that the title of this article of the Constitution is "*Private* Corporations"; section 8 thereof, intended to be broader, specifically includes municipal corporations.

[6] Acts 32nd G. A., Ch. 112; Supplement, Code of Iowa, 1913, Secs. 2157f–2157j.

[7] Article I, Sec. 10, Par. 1 of the Constitution of the United States provides *inter alia* that "No state shall . . . pass any . . . law impairing the obligation of contracts."

[8] Detroit United Railway v. Michigan, 242 U. S. 238 (1916).

[9] New Orleans Water Works Company v. Rivers, 115 U. S. 674 (1885); Manigault v. Springs, 199 U. S. 473 (1905).

[10] Boston Beer Company v. Massachusetts, 97 U. S. 25 (1877); Atlantic Coast Line v. Goldsboro, 232 U. S. 548, 558 (1913) and cases there cited.

[11] Munn v. Illinois, 94 U. S. 113 (1876); Milwaukee Electric Company v. Railroad Commission, 238 U. S. 174 (1915); Leiper v. Baltimore & P. R. R. Company, 262 Pa. 328; 105 Atl. 551 (1918); Union Dry Goods Company v. Georgia Public Service Company, 248 U. S. 372 (1919).

or health, and those which are merely a compensation for the performance of a public service, among which is the right to fix rates of service.[12] In the latter class of case, it is held that the legislature may divest itself of power to change the terms of the grant, when it clearly appears that it positively and intentionally contemplated this result.[13] The power to make binding rate agreements, conclusive on the state, may also be delegated to municipalities under the same condition.[14] But in the majority of cases, some clause is found in the state constitution which can be construed as a limitation on the power of the legislature to divest itself of the right to regulate rates so that an attempt to do so will be invalid;[15] or a reservation of this power to the state is found in the grant itself. So practically, the cases are few in which the state may not by a proper exercise of its authority, remedy any injustices or inequalities resulting from rates fixed by contract or franchise.

In the Dubuque case it might well have been argued, though the point seems not to have been raised, that the Iowa statute was not designed to annul franchise agreements of the kind involved in that case. In its decision, the Circuit Court of Appeals professed to follow the Supreme Court of the United States in its recent decision in the case of *Pawhuska v. Pawhuska Oil & Gas Company*,[16] in which the validity of an order of the state Corporation Commission changing franchise rates was questioned by the city. The city formerly having the power to regulate such rates, and the state having attempted to divest it of that power and bestow it on another agency, "the whole controversy is as to which of two existing agencies or arms of the state government is authorized to exercise in the public interest a particular power, obviously governmental, subject to which the franchise was granted."[17] This was conceived to be only a question of local law, as to which the decision of the supreme court of the state was final. In the Dubuque case the statute did not in words make

[12] Bessemer v. Bessemer City Water Works, 152 Ala. 391; 44 So. 663 (1907).

[13] Pingree v. Michigan Central Railroad Company, 118 Mich. 314; 76 N. W. 635 (1898).

[14] Cincinnati v. Public Utilities Commission, 98 Ohio St. 320, 121 N. E. 688 (1918); Virginia-Western Power Company v. Commonwealth, 99 S. E. 723 (Va. 1919); Detroit United Railway v. Michigan, 242 U. S. 238 (1918).

[15] Or such as that relied on in the Wilkinsburg Borough Case, *supra*. In Missouri a provision of the state constitution forbidding construction of street railways without the consent of the local authorities was held merely to give the municipalities the right to make agreements as to rates of fare, which agreements are nevertheless subject to the police power of the state and must give way to the orders of the public service commission; no restrictive clause of the constitution like that in the Pennsylvania Constitution relied on in the Wilkinsburg Case was considered necessary. St. Louis v. Public Service Commission, 276 Mo. 509; 207 S. W. 799 (1918).

[16] 250 U. S. 394 (1919).

[17] Id., at 397.

invalid existing contracts for the sale of tickets at reduced rates, but merely provided that when tickets were so sold no discrimination should be made between persons entitled to purchase them. It has been held that contracts or franchise agreements as to rates of service are not invalidated by the mere passage of laws requiring that rates be reasonable, prohibiting discriminations, and creating public service commissions with which schedules of rates must be filed;[18] the statute must clearly show the intention of the legislature that such rates should no longer be binding on the utility.[19] That the court considered this enactment of the Iowa legislature an abrogation of so much of the franchise contract as bound the company to sell tickets at a reduction to certain classes of the city's inhabitants for use only at certain hours of the day, rather than an extension of the obligations of the company, seems clearly an indication of judicial policy.

This inclination of the courts to narrow the efficacy of franchise agreements and contracts as to rates, and to resolve all doubts in favor of the power of the state to regulate such matters, is a salutary one. The power to regulate rates in the public interest should be held as inviolable as is the power to safeguard public health, safety and morals. The state, while requiring the faithful performance of the duties assumed by public service companies, should be able to guarantee them a fair and reasonable return on their investment, and at the same time to protect the people of the state from possible exploitation by the utilities should conditions be reversed.

O. P. M.

THE RIGHT OF PRIVACY.—The recent decision in the case of *Humiston v. Universal Film Mfg. Co.*,[1] which fixes within new bounds the right of privacy as recognized by a New York statute,[2] is but another illustration of the increasing prominence and importance which this right, recognized only within the last decade, is assuming in our law. In this case the plaintiff sought to enjoin defendant film company from presenting her picture in a motion picture film depicting current events, the picture having been

[18] Manitowoc v. Manitowoc Traction Company, 145 Wis. 13; 129 N. W. 925 (1911); Sultan R. & Timber Company v. Great Northern R. Company, 58 Wash. 604; 109 Pac. 320 (1910); Belfast v. Belfast Water Company, 98 Atl. 738 (Me. 1916), a case substantially similar to the Dubuque case, except that after a certain number of years free service was to be rendered the city, instead of service at reduced rates to a portion of its citizens. In Quinby v. Public Service Commission, 223 N. Y. 244; 119 N. E. 433 (1918), the public service commission was held not to have jurisdiction to alter rates fixed by the city, because the court failed to find in the statute creating the commission a word which would disclose an intent to deal with rates fixed by agreement with local authorities.

[19] Denver Company v. Englewood, 62 Colo. 229; 161 Pac. 151 (1916); State *ex rel.* City of Billings v. Billings Gas Company, 55 Mont. 102; 173 Pac. 799 (1918).

[1] 178 N. Y. S. 752 (1919).

[2] Civil Rights Law (Consol. Laws, c. 6), Sec. 50 & 51.